IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

Crl.Rev.Pet.No. 109 of 2007()

CRA.527/2005 of ADDL.SESSIONS COURT (ADHOC), ALAPPUZHA
CC.764/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT -I, ALAPPUZHA

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REVN. PETITIONER: APPELLANT/ACCUSED:

T.R. HARI, S/O. RAGHAVAN,
THEJAS HOUSE, CHETTIKADU, PATHIRAPPALLY P.O.,
ALAPPUZHA.

BY ADV. SRI.MATHEW JAMES

RESPONDENTS: RESPONDENTS & ADDL.RSPDTS.3 TO 6/COMPLAINANT&STATE

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1. S. GANESHAN, S/O. SKANDA SWAMY,
SUDARSANA, VELLAKINAR, ALAPPUZHA. (DIED).

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

3. PAZHANIYAMMA, W/O. LATE GANESHAN,
SUDARSANA, VELLAKINAR, ALAPPUZHA.

4. SUDHA RAJENDRAN, D/O.PAZHANIYAMMA,
SUDARSANA, VELLAKINAR, ALAPPUZHA.

5. MAHESH, S/O. LATE GANESHAN,
SUDARSANA, VELLAKINAR, ALAPPUZHA.

6. SUNITHA, D/O. PAZHANIYAMMA,
SUDARSANA, VELLAKINAR, ALAPPUZHA.

BY PUBLIC PROSECUTOR SRI.C.K. SURESH.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.R.P.NO. 109 OF 2007

Dated this the 8th day of January, 2007

ORDER

This revision petition is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution under Sec.138 of the N.I. Act.

2. The cheque is for an amount of Rs.55,000/-. It bears the date 20/3/2002. The petitioner now faces a sentence of simple imprisonment for a period of six months and to pay the actual cheque amount of Rs.55,000/- as compensation and in default, to undergo simple imprisonment for a period of six months.

3. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner fairly concedes that the petitioner does not want to assail the verdict of guilty, conviction and sentence on merits. He only prays that leniency may be shown on the question of sentence. I reckon that as an informed and fair stand taken by the learned counsel for the petitioner. The concurrent verdict of

guilty and conviction can, in these circumstances, be upheld.

4. Coming to the question of sentence, I have already adverted to the principles governing imposition of sentence in a prosecution under Sec.138 of the N.I. Act in the decision reported in **Anilkumar v. Shammy** (2002 (3) K.L.T. 852). I am not satisfied that there are any compelling circumstances available in this case which would justify the imposition of any deterrent substantive sentence of imprisonment on the petitioner. Leniency can be shown on the question of sentence. But at the same time the courts cannot ignore the plight of the respondent/complainant who has been compelled to fight two rounds of legal battle and wait from 20/3/02 for the redressal of his genuine grievance. An appropriate direction for payment of compensation coupled with a lenient substantive sentence of imprisonment shall meet the ends of justice, I am satisfied. The challenge in this revision petition can succeed only to the above extent.

5. In the nature of the relief which I propose to grant, I am satisfied that it is not necessary to wait for issue and return of notice to the respondent/complainant in this revision petition.

6. In the result:

(a) This Criminal Revision Petition is allowed in part.

(b) The impugned verdict of guilty and conviction of the petitioner under Sec.138 of the N.I. Act are upheld.

(c) But the sentence imposed is modified and reduced. In supersession of the sentence imposed on the petitioner by the courts below, he is sentenced to undergo imprisonment till rising of court. He is further directed under Sec.357(3) of the Cr.P.C. to pay an amount of Rs.70,000/- as compensation and in default, to undergo simple imprisonment for a period of three months. If realised, the compensation amount shall be released to the respondent/complainant.

7. The petitioner shall appear before the learned Magistrate on or before 28/2/07 to pay the amount and avoid the default sentence. The sentence shall not be executed till that date. If the petitioner does not appear as directed, the learned Magistrate shall thereafter take steps to execute the modified sentence.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge